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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,565	08/24/2004	Ralf Wiedemann	102792-333	3643

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EXAMINER	
DOUYON, LORNA M	

ART UNIT	PAPER NUMBER
1796	

MAIL DATE	DELIVERY MODE
12/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Application No.	Applicant(s)	
10/505,565	WIEDEMANN ET AL.	
Examiner	**Art Unit**	
Lorna M. Douyon	1796	

Office Action Summary

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1, 3-9, 15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-9 and 15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. This action is responsive to the amendment filed on September 27, 2007.

2. Claims 1, 3-9 and 15 are pending.

3. The amendment to the title of the invention is acknowledged.

4. Claims 1, 3-9 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the at least one solid" in line 5. There is insufficient antecedent basis for this limitation in the claim. Please note that in line 3, the phrase "at least" was deleted.

The remaining claims, i.e., claims 3-9 and 15, being dependent upon claim 1, are rejected as well. Please note that the rejection of claims 6-7 under 35 U.S.C. 112, second paragraph in paragraph 5 of the previous office action is overcome in view of Applicants' amendment, however, they remain rejected under 35 U.S.C. 112, second paragraph, in view of their dependency to claim 1.

5. The rejection of claims 1, 3-8 under 35 U.S.C. 102(e) as anticipated by Pfeiffer et al. (US Patent No. 6,492,312) is withdrawn in view of Applicant's amendment.

6. Claims 1, 3-8 stand rejected under 35 U.S.C. 103(a) as being obvious over Pfeiffer et al. (US Patent No. 6,492,312), hereinafter "Pfeiffer".

Pfeiffer teaches a water soluble sachet comprising a detergent composition having a discrete particle that enhances cleaning in a dishwashing machine (underlining supplied, see abstract), wherein the dishwashing composition is a gel which comprises discrete particles having an approximate diameter from about 100 to about 5000 microns (5mm) (see col. 2, lines 60-63) and having a viscosity from about 100 to about 45,000 cps (about 100 to about 45,000 mPas) (see col. 4, lines 56-61). The discrete particles may be a wax-encapsulated bleach (see col. 9, line 17). Suitable materials for the water soluble sachet include polyvinyl alcohol (see col. 3, lines 48-65). Pfeiffer, however, fails to disclose the density of the solid particle, and one solid floating on the outer surface of the liquid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the density of the discrete particles, for example, the wax-encapsulated bleach to have a density lower than the density of the dishwashing composition and to have at least one of the wax-encapsulated bleach particle to float on the outer surface of the liquid considering that the particles are described as discrete and would have dispersed/suspended/floated in the composition.

7. Claim 9 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Pfeiffer as applied to the above claims, and further in view of Dasque et al. (WO

01/60966), hereinafter "Dasque" for the reasons set forth in the previous office action and which is repeated below for Applicants' convenience.

Pfeiffer teaches the features as described above. Pfeiffer, however, fails to disclose the water soluble sachet comprising a detergent composition for use in a laundry washing machine.

Dasque, an analogous art, teaches that a detergent composition in a water-soluble pouch comprising similar ingredients (see abstract) are prepared as laundry or dishwashing compositions (see page 21, lines 29-32), hence useful for laundry or dishwashing machines.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the product of Pfeiffer not only for dishwashing purposes but also for laundry washing because it is known from Dasque that a similar product is useful for both laundry and dishwashing applications.

8. Claims 1, 3-9 and 15 stand rejected under 35 U.S.C. 102(e) as anticipated by Becks et al. (WO 02/057402) for the reasons set forth in the previous office action and which is repeated below for Applicants' convenience.

Becks teaches a liquid composition comprising a transparent or translucent liquid medium and solid particles contained within the liquid medium wherein the composition is contained within a pouch made from a transparent or translucent water-soluble material, so that the individual solid particles are visible from outside of the pouch, the solid particles having a mean geometric diameter of between 0.5mm and 12 mm (see abstract). One of the advantages of the invention of Becks is that the solid particles do

not necessarily need to be stably suspended in the liquid medium, but rather the solid particles may sink or float in the liquid medium (see page 2, last paragraph). The liquid composition can have any viscosity and the viscosity may be controlled, if desired, by using various viscosity modifiers (see page 7, lines 10-14). The composition should inherently have a dissolution time as those recited because same components have been utilized. The compositions are typically laundry or dishwashing compositions (see page 7, lines 19-21). In Example 2b, Becks teaches a low moisture liquid detergent composition with one 10 mm sphere/capsule in a pouch of soluble polyvinyl alcohol film, wherein the spherical particle of sample b is less dense than the detergent and float in the detergent in the pouch and rapidly dissolve when the pouch is added to the wash (see entire page 26). Becks teaches the limitations of the instant claims. Hence, Becks anticipates the claims.

9. Claim 1 stands provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 6 of copending Application No. 10/505,624 for the reasons set forth in the previous office action.

Response to Arguments

10. Applicants' arguments filed September 27, 2007 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon Pfeiffer, Applicants argue:

"There are significant differences between a composition, such as Pfeiffer, having particles distributed throughout the liquid and that of the present invention having one solid floating on outer surface of the liquid. For example, as discussed in the specification, when a composition comprises a viscous liquid with solid within the liquid it takes time for the liquid to dissolve or diffuse after the water-soluble material dissolves and this delayed dissolution hinders the release of the solid which is particularly disadvantageous if the solid is intended for fast dissolution in the wash liquor. (See specification at page 2, line 29 to page 3, line 25 (¶¶ 0006-0007 in the published application US 2005/0153861.)) As further discussed in the specification, one way to avoid the hindrance of the solid release is adjusting the density of the solid to less than the density of the liquid so that the solid floats on outer surface of the liquid. (See specification at page 6, line 16 to page 7, line 6 (¶ 0022 in the published application US 2005/0153861.)) Indeed the examples in the specification demonstrate the advancement to the art provided by the present invention when a solid in a package has lower density than one having a higher density in that the lower density solid is released in 2 minutes but it takes 4.5 minutes for a higher density solid to release in the wash liquor. (See specification at page 27, line 12 to page 29, line 12 (¶¶ 0099-0107 in the published application US 2005/0153861.)"

The Examiner respectfully disagrees with the above arguments because Pfeiffer teaches, in the abstract and col. 1, lines 7-10, a water soluble sachet comprising a detergent composition having a discrete particle that enhances cleaning in a dishwashing machine. In addition, even though the present claim 1 state "...one solid..." (line 3) the present claim uses the "comprising" language (see lines 1 and 3), and the term "comprising" leaves the claim open for the inclusion of unspecified ingredients even in major amounts, see *Ex parte Davis et al.,* 80 *USPQ* 448 (PTO Ed. App. 1948). Also, the broad "comprising" and "containing" terminology do not exclude the presence of other ingredients in the composition, unlike the narrow "consisting of" language, see *Swain v.Crittendon, 332 F* 2d 820,14 1 USPQ 8 11 (CCPA 1964). Hence, the "comprising" language of claim 1 is open to "another, or two or more solid(s)", unlike the "consisting of" language. As stated in the previous office action, which is repeated above, it would have been obvious to one of ordinary skill in the art at the time the

invention was made to reasonably expect at least one of the wax-encapsulated bleach particle of Pfeiffer whose particle size overlaps those recited to float on top of the liquid composition, considering that the particles are described as discrete, hence would have dispersed/suspended/floated in the composition.

Applicants also argue that a packaged detergent composition having one solid floating on the outer surface of the liquid would not have been predictable based on the disclosure of Pfeiffer, and thus, one skilled in the art, at the time of the invention, could not predict that including one solid in the liquid composition with a density such that it floats on the outer surface of the liquid would favorably decrease the release time of the solid into the wash liquor. The examples mentioned above demonstrate this. The claims have been amended to recite that the packaged detergent composition has only one solid which floats on the outer surface of the liquid.

The response above applies here as well. In addition, the examples in the specification (see pages 27-29) have been carefully considered, however, they are not commensurate in scope with the present claim 1. First of all, the viscosity of the liquid composition in the cited examples were not mentioned. The viscosity value was left blank. Applicants in their arguments above stated that "*when a composition comprises a viscous liquid with solid within the liquid it takes time for the liquid to dissolve or diffuse after the water-soluble material dissolves and this delayed dissolution hinders the release of the solid which is particularly disadvantageous if the solid is intended for fast dissolution in the wash liquor. (See specification at page 2, line 29 to page 3, line 25 (¶¶ 0006-0007 in the published application US 2005/0153861.)*" However, the present claim

1 does not even require the viscosity of the liquid composition. Secondly, the showing is only true for the specific components and particle sizes in the examples.

With respect to the rejection of claim 9 based upon Pfeiffer in view of Dasque, Applicants argue that this claim is dependent from claim 1, and as discussed above, claim 1 is not obvious over Pfeiffer, and such a method of washing laundry is not obvious over Pfeiffer in view of Dasque.

The above response to Pfeiffer applies here as well. Hence, the combination of Pfeiffer with Dasque is maintained.

With respect to the anticipation rejection based upon Becks, Applicants argue that Becks when read as a whole discloses compositions comprising suspended particles and not one particle floating on the outer surface of the liquid as in the present invention, and regarding the example mentioned by the Examiner, the particle addressed therein is said to float in the detergent in the pouch and not on a surface of the liquid.

The Examiner respectfully disagrees with the above arguments because it is clear from Example 2b of Becks that the spherical particle of sample b (i.e. 10mm sphere) is less dense than the detergent and float in the detergent in the pouch and rapidly dissolve when the pouch is added to the wash (see last three lines on page 26). The meaning of "float" in the dictionary is "to rest or remain on the surface of the liquid". Hence, within the plain meaning of "float", the "spherical particle b of Becks in Example 2b which "float in the detergent in the pouch" reads of the present claims' "floating on the outer surface of at least one liquid".

With respect to the provisional obviousness type double patenting rejection, Applicants argue that a terminal disclaimer will be submitted at the appropriate time if necessary at the conclusion of prosecution of this application.

The provisional obviousness type double patenting rejection is maintained until such time Applicants will submit a timely terminal disclaimer.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Lorna M. Douyon/
Primary Examiner
Art Unit 1796

LMD
11-28-07